

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JOSEPH MANTHA on behalf of himself  
and others similarly situated,

Plaintiff,

v.

QUOTEWIZARD.COM, LLC

Defendant.

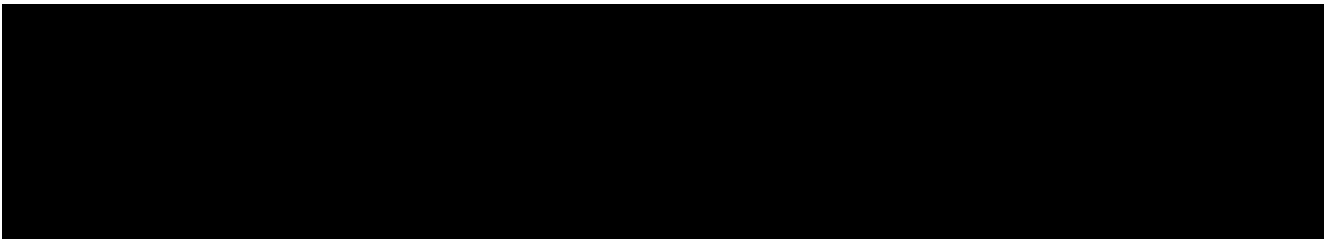
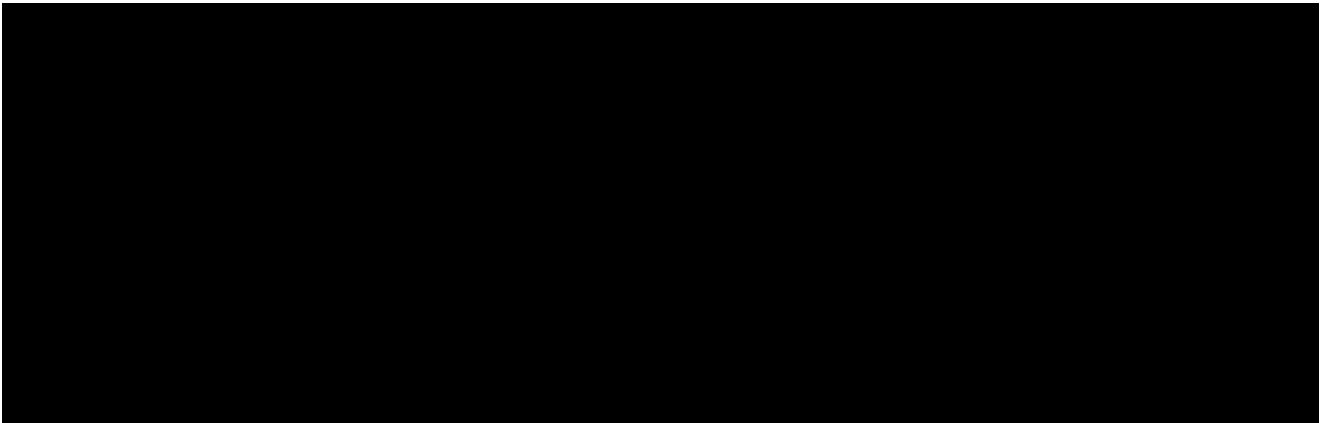
Case No. 1:19-cv-12235-LTS-PK

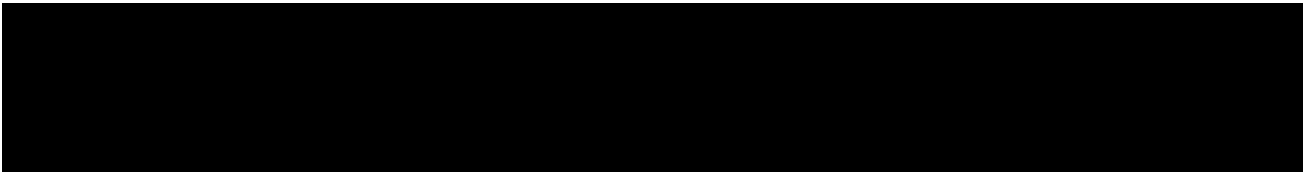
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**PLAINTIFF’S LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT  
OF MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO “PRIOR EXPRESS  
CONSENT” AND ENTITLEMENT OF PLAINTIFF’S PERSONAL CELL PHONE TO  
DNC PROTECTION**

1. QuoteWizard.com, LLC (“QuoteWizard” or “Defendant”) is in the business of selling its services to insurance agents, and providing those agents with potential customers and new business. *See* <https://quotewizard.com/corp/about-us>.

2. QuoteWizard is owned by LendingTree, Inc. *See* <https://www.lendingtree.com>.





5. On its web site, Drips explained that its automated “Conversational Text Messaging” technology uses artificial intelligence (“AI”) to understand “tens of thousands of intent-driven responses to hold hundreds of millions of asynchronous conversations at a time...” See Exhibit 3, Declaration of Counsel, (Bates 00005) citing from <https://www.drips.com/blog/how-drips-is-leading-the-way-in-humanizing-ai-driven-marketing-campaigns/>.

6. Drips claims that its AI based “Conversational Text Messaging” technology is: “*extremely human-like* in that it can answer questions, respond to messages and hold actual conversations with customers. These conversations are personalized and allow for information exchange and context to be conveyed.”

*Id.* (emphasis added) (Bates 00005).

7. Consumers who receive these automated spam texts from Drips, are not interacting with a human being. They are interacting with a bot designed to appear like a human being. As Drips’ founder, AC Evans, explained in an interview with MixEnergy.com:

It has to be humanized because nobody wants to talk to a chatbot. That’s one big difference between our system and any chatbot out there is you can’t tell it’s a bot. It is completely humanized. And when you may be able to trip it up to the point where you would be able to tell a bot, it actually still gets flipped back to a human to respond with empathy and context.

See Exhibit 3, Declaration of Counsel, citing from <https://mixergy.com/interviews/drips-with-ac-evans/> (AC Evans- founder of Drips- is interviewed in regards to “Conversational Messaging” and how it works) (Bates 00044).

8. Mr. Evans further noted that he has “always had that kind of spammer marketer, you know, scale mentality” and noted that “millions and millions” of concurrent conversations were happening at Drips and most of the process is “completely automated.” *Id.* (Bates 00032)

11. The exact number of telemarketing texts sent by Drips on behalf of QuoteWizard is unknown at this time as initial discovery was limited to Mr. Mantha’s individual claim. *See* ECF #39.

12. During discovery, however, plaintiff sought the production of do not call requests submitted by consumers who objected to their receipt of QuoteWizard’s telemarketing texts (“DNC Complaints”). *See* ECF #104, #112, #124, #132, #133, #136, #144, #149-151; ECF# 153; ECF #158, #162, #163, #165, #167, #170, #177-180, #184, and #186.

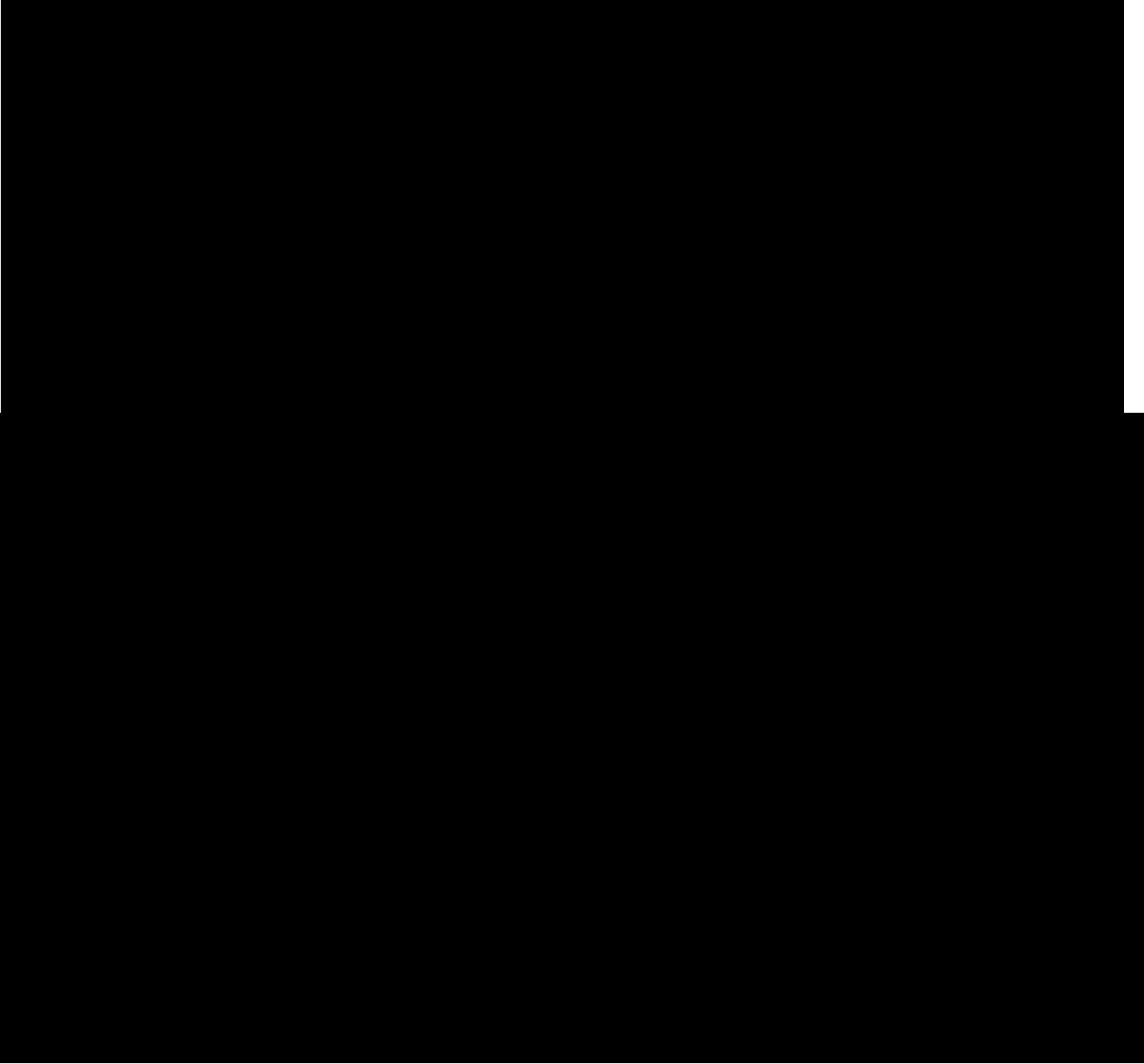
13. QuoteWizard resisted producing the DNC Complaints. *Id.*

14. This Court ultimately ordered QuoteWizard to produce the DNC Complaints as well as all documents relating to the DNC Complaints. *Id.*

15. In response, QuoteWizard produced excel spread sheets identifying over 2.5 million DNC Complaints. *See* ECF# 184, Defendant’s Notice to Court Regarding Supplemental, Corrected Production, (QuoteWizard acknowledges error in its prior discovery responses disclosing that the number of consumers who submitted Do Not Call complaints after receiving

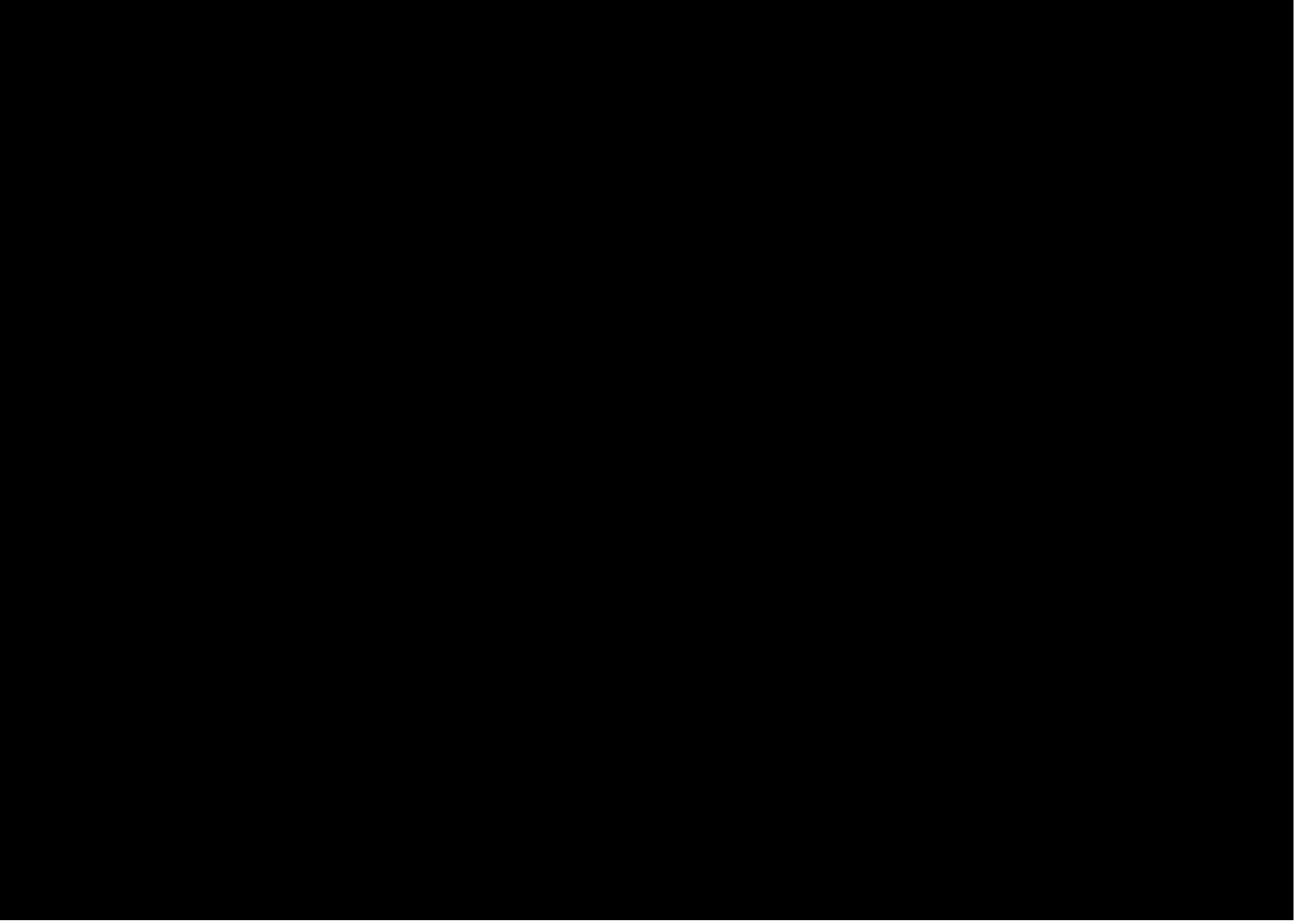
QuoteWizard telemarketing texts was not 46,000 as represented previously to the Court, but in fact was over *two million*).

16. QuoteWizard, however, did not produce the substance of these complaints. *See* ECF #104, #112, #124, #132, #133, #136, #144, #149-151; #153; #158, #162, #163, #165, #167, #170, #177-180, #184, and #186.



#136, #144, #149-151; #153; #158, #162, #163, #165, #167, #170, #177-180, #184, and #186.

23. To overcome this claim of purported burden, the parties ultimately agreed that QuoteWizard would produce 600 of the substantive Tier 1 and Tier 2 DNC Complaints immediately preceding the text solicitation sent by Drips on behalf of QuoteWizard to Mr. Mantha. QuoteWizard also agreed to produce all of the DNC Complaints received between March 17, 2021, and May 17, 2021. *See* ECF #186.



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<sup>1</sup> The raw language utilized by consumers responding to QuoteWizard's telemarketing spam defies any conceivable claim that these consumers welcomed QuoteWizard's spam texts and expressly consented to receive text telemarketing messages from QuoteWizard, as repeatedly alleged by QuoteWizard throughout this litigation.

***Mr. Mantha Receives Multiple Telemarketing Texts From QuoteWizard***

25. Plaintiff, Joseph Mantha (“Plaintiff” or “Mr. Mantha”) is a resident of Rutland, Massachusetts. He is married and has two minor children. *See Exhibit 6*, Plaintiff’s Answers and Supplemental Answers to Interrogatories at #15; *Exhibit 7*, Deposition of Joe Mantha Day 1 at page 9, lines 14-24, and page 10, lines 1-5.

26. Mr. Mantha is employed as the Director of Residential Services at the Franklin Perkins School, an entity that provides services and housing for individuals with special needs, located in Lancaster, Massachusetts. *Id.* at *Exhibit 6*, Interrogatory Answer #7. *See Exhibit 7*, Mantha Depo Day 1 at page 13, lines 15-24, and page 14, lines 1-11; *Exhibit 8*, Deposition of Joe Mantha Day 2 at page 10 lines 6-16.

27. The wireless number assigned to Mr. Mantha’s personal cellular phone is (508) 353-\*\*\*\* (the “Wireless Number”) and is used by Mr. Mantha for personal purposes. *See Exhibit 6*, Interrogatory Answer #6 and #7. *See Exhibit 7*, Mantha Depo Day 1 at page 26, lines 9-10.

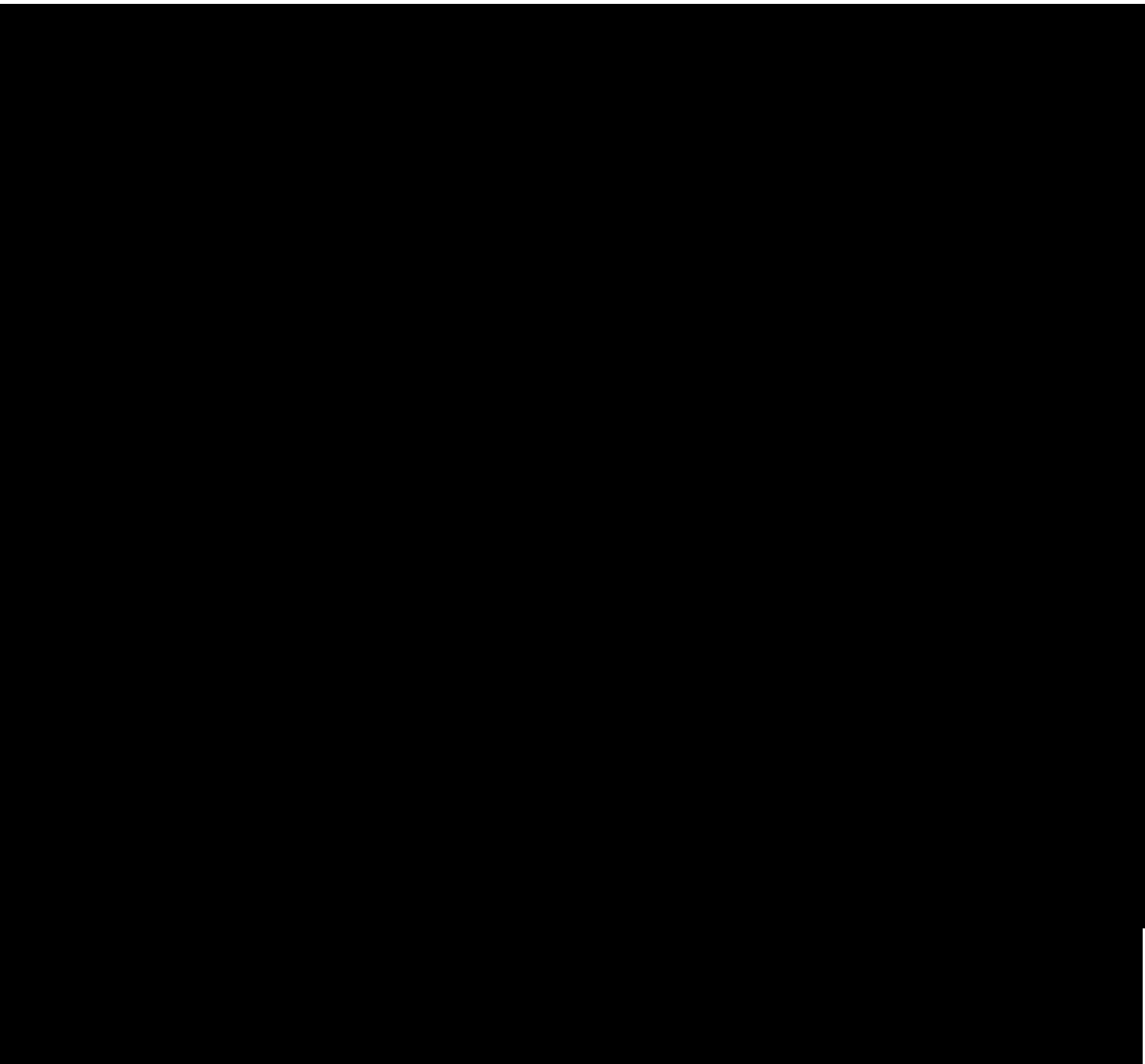
28. The Wireless Number is subscribed to Mr. Mantha in his name, and not in the name of his employer. *See Exhibit 6*, Plaintiff’s Supplemental Answers to Interrogatories at Answer #5, 7; *Exhibit 9*, Verizon Phone Bill Issued to Mr. Mantha.

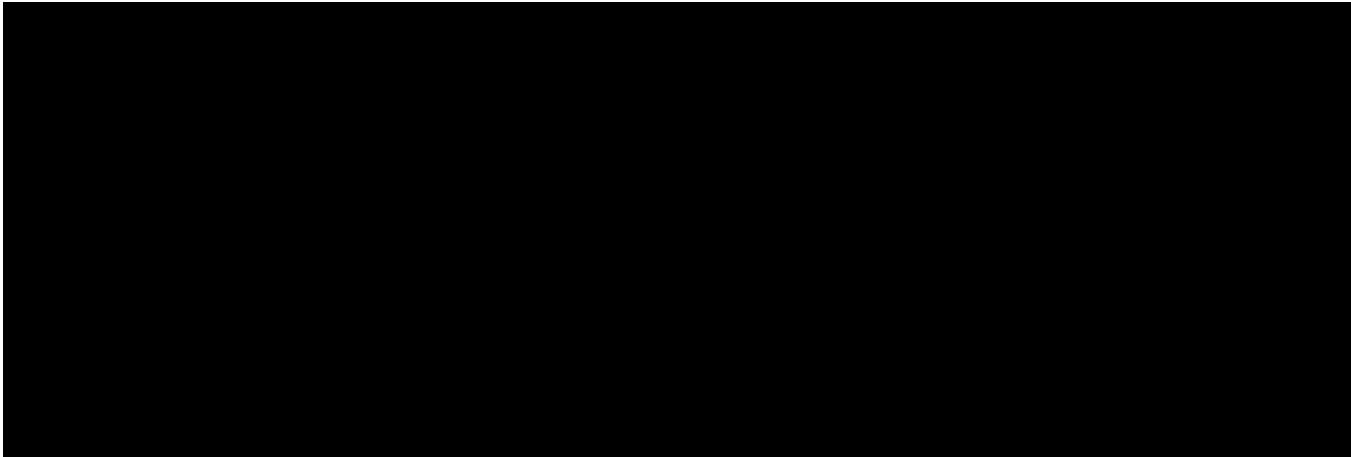
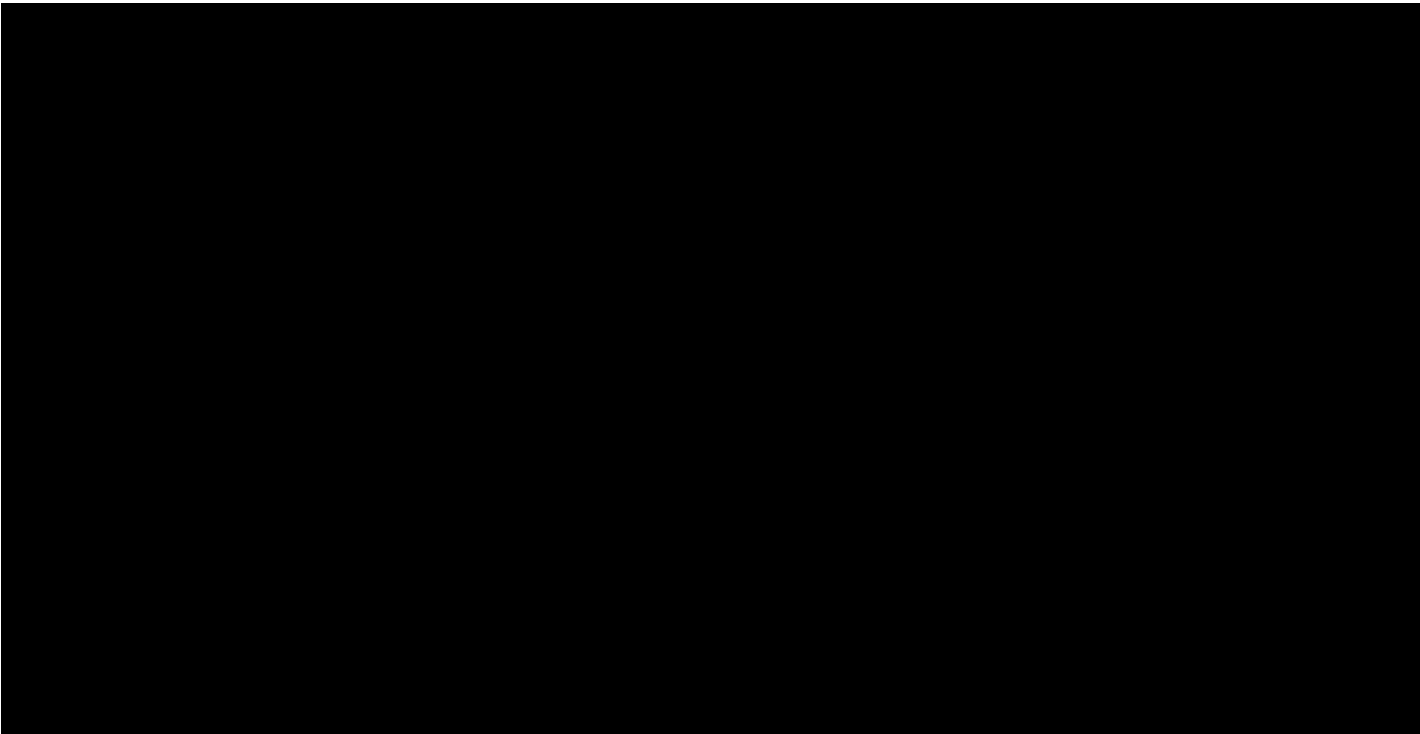
29. The bill for the Wireless Number is addressed to Mr. Mantha at his home. *See Exhibit 6*, Plaintiff’s Supplemental Answers to Interrogatories at Answer #5, 7; *Exhibit 9*, Verizon Phone Bill Issued to Mr. Mantha.

30. On November 7, 2008, Mr. Mantha listed the Wireless Number on the National Do Not Call Registry effectively instructing telemarketers not to call the Wireless Number with telemarketing solicitations. *See Exhibit 6*, Plaintiff’s Supplemental Interrogatory Answer #5.

31. Mr. Mantha does not have a work issued cell phone. *See* Exhibit 8, Mantha Depo Day 1 at page 31 lines 6-7; Exhibit 8, Deposition of Joe Mantha Day 2 at page 26 lines 4-6.

32. Mr. Mantha began receiving telemarketing texts from QuoteWizard on August 9, 2019. *See* Exhibit 10, Chronology of Text Exchanges Between QuoteWizard and Mr. Mantha, produced by QuoteWizard at QuoteWizard\_Mantha 000009.

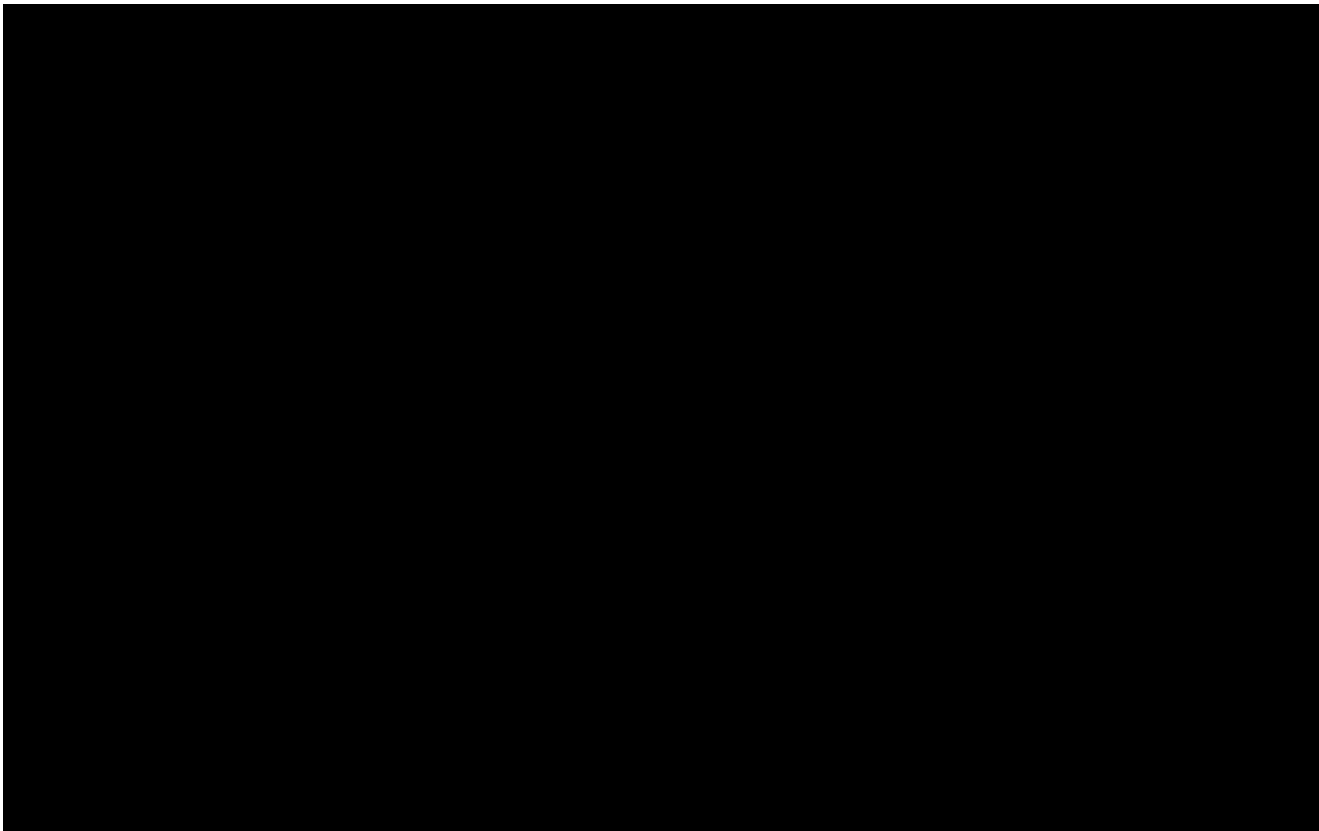
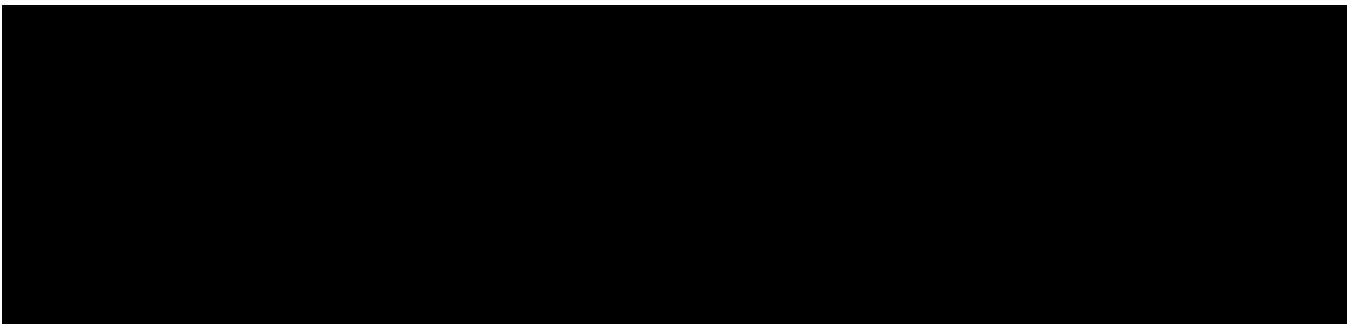




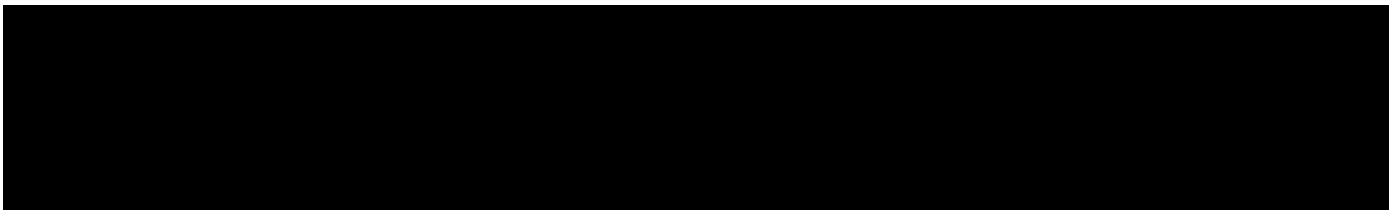
Supplemental Answers to Interrogatories at #23. After identifying QuoteWizard as, in fact, the entity responsible for the telemarketing text campaign at issue, Mr. Mantha proceeded to file the instant consumer TCPA class action acting not just for himself, but for all other consumers similarly situated who received illegal telemarketing text spam from QuoteWizard. *See* ECF #1, Complaint.

***Mr. Mantha Did Not Consent To Receive Telemarketing Texts From QuoteWizard***





52. Mr. Mantha has denied ever visiting the Snappy Auto web site or to ever consenting to receive QuoteWizard telemarketing texts in any fashion or form. *See* Exhibit 6, Plaintiff's Answers and Supplemental Answers to Interrogatories at #9, 10, 21, 25; Exhibit 7, Deposition of Joseph Mantha, Day 1, at page 26, lines 9-10; Exhibit 14, Declaration of Joseph Mantha.



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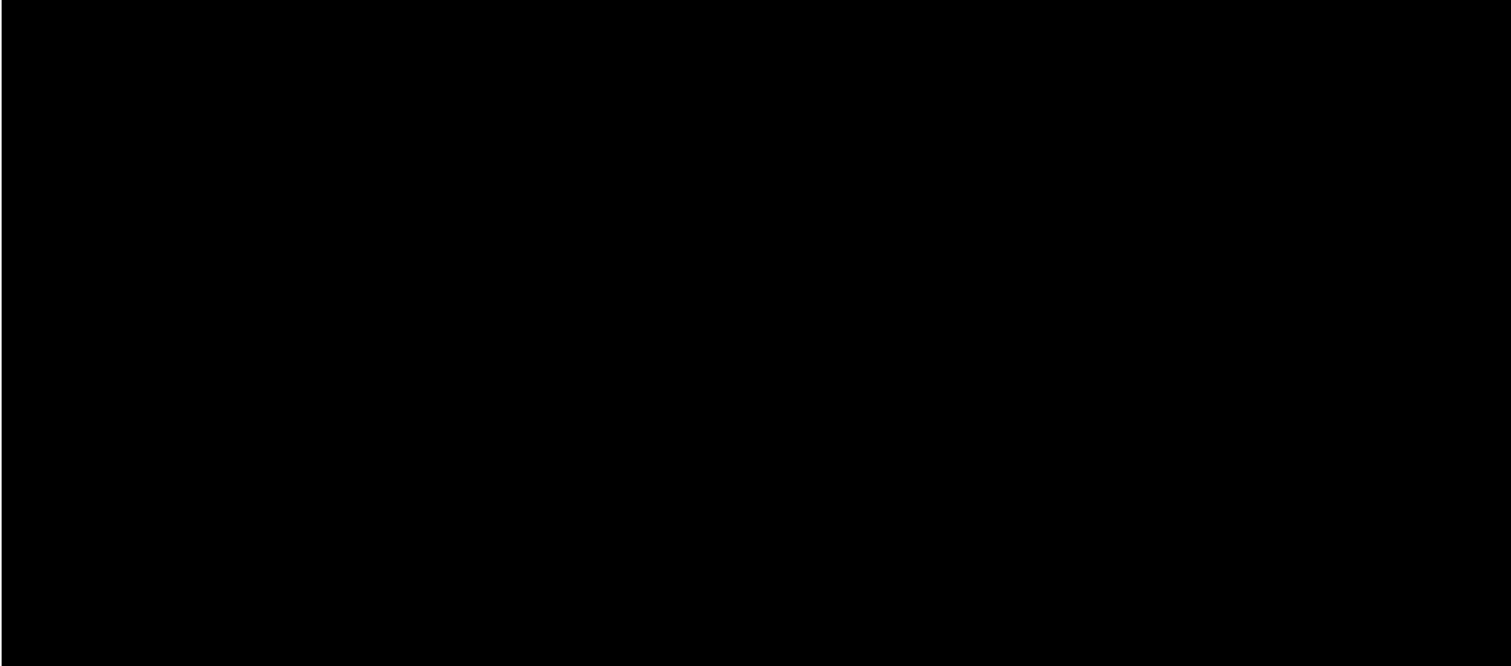
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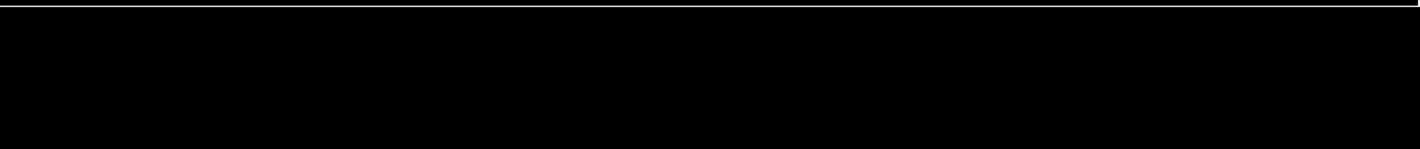
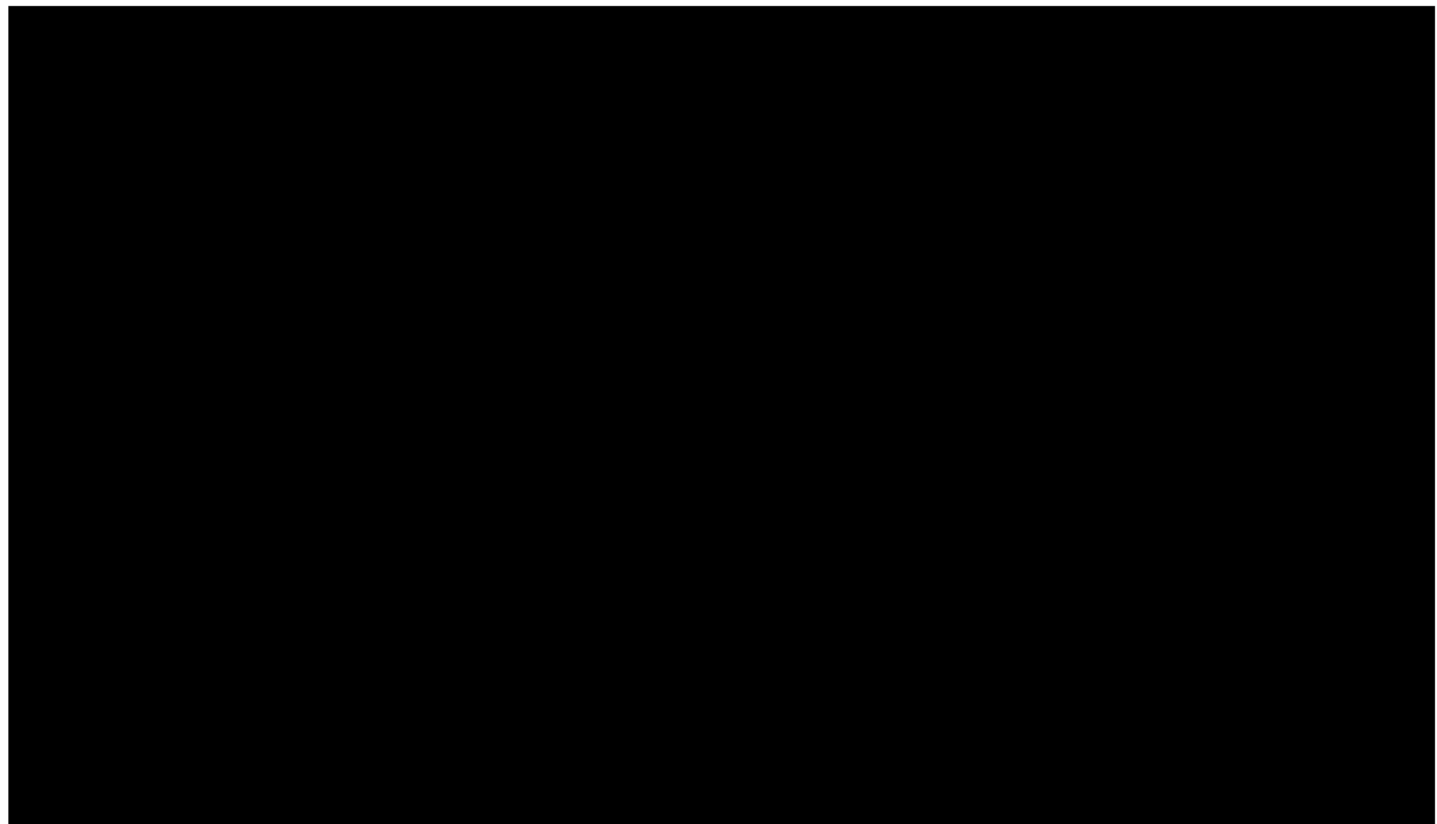
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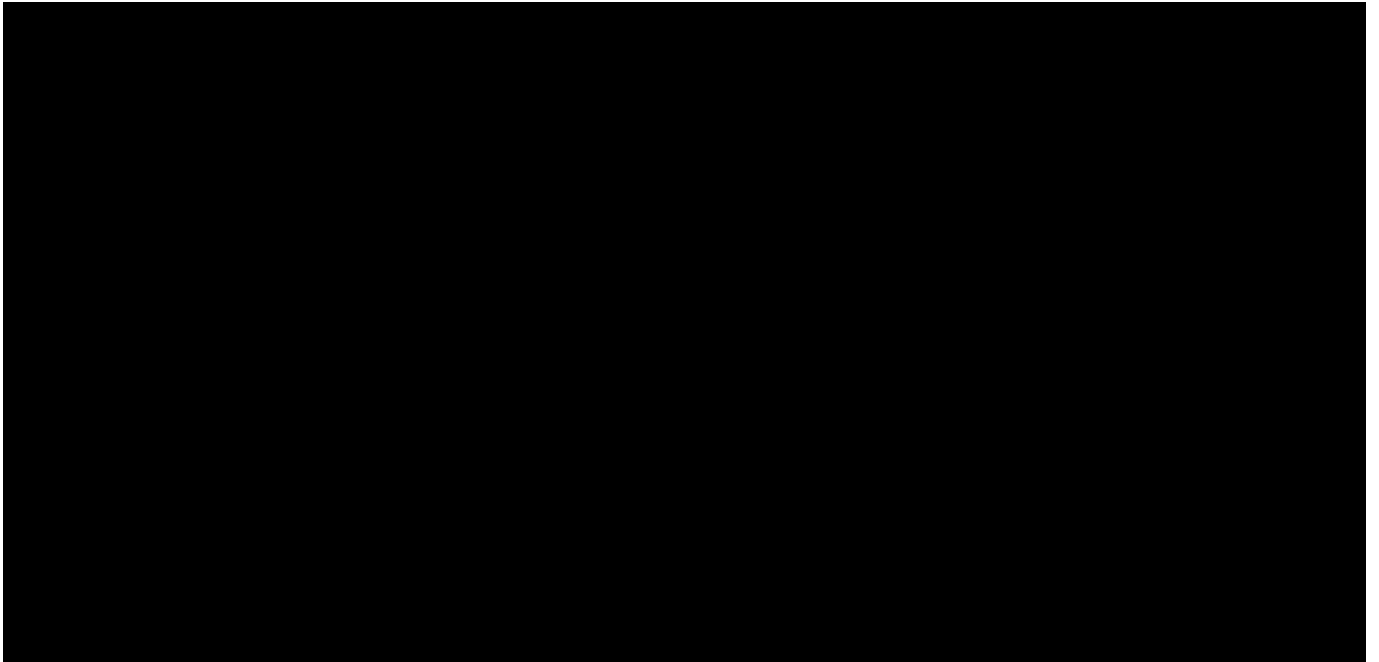
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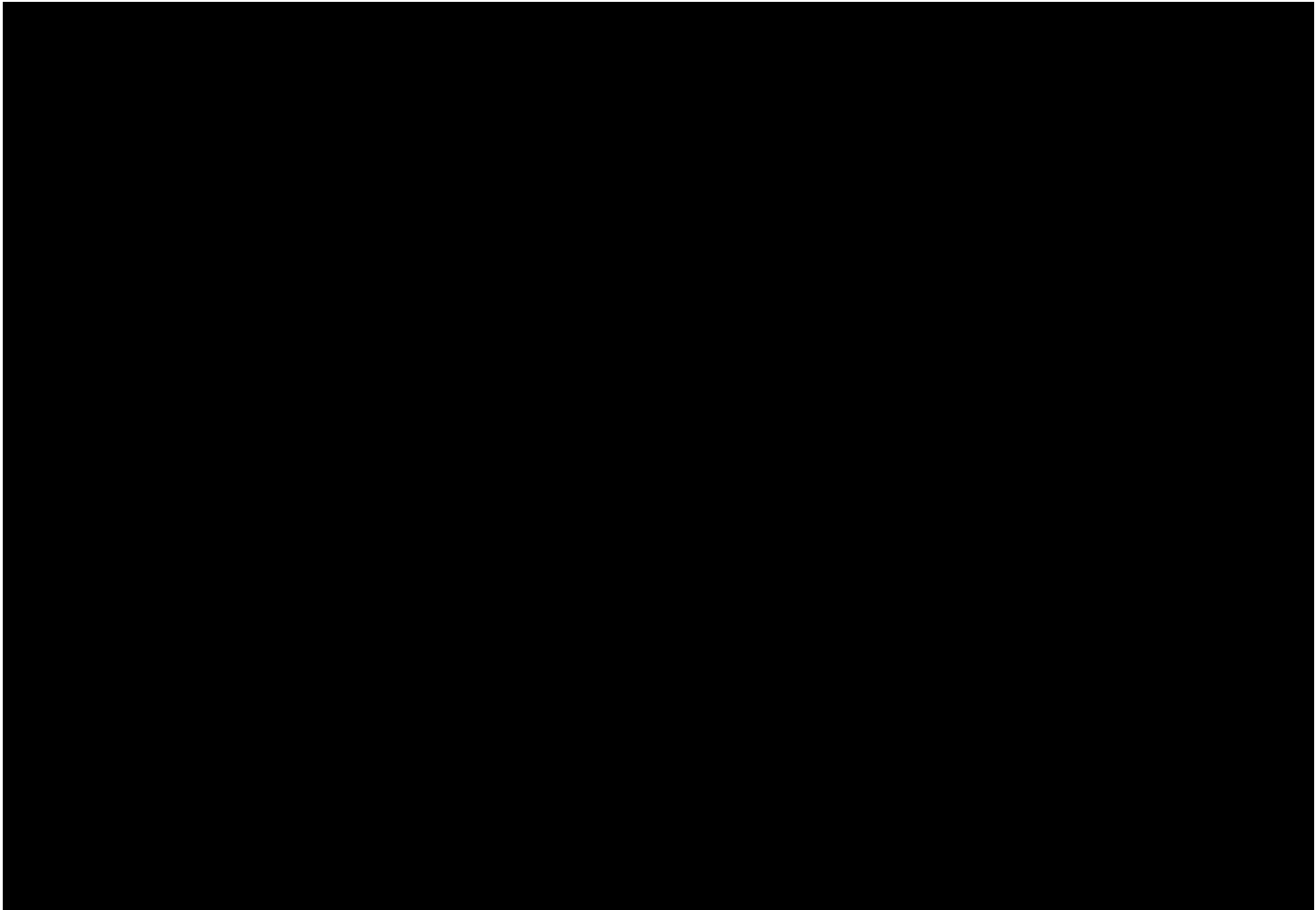


*The Jornaya ID Listed On The QuoteWizard Opt In Does Not Relate to Mr. Mantha*



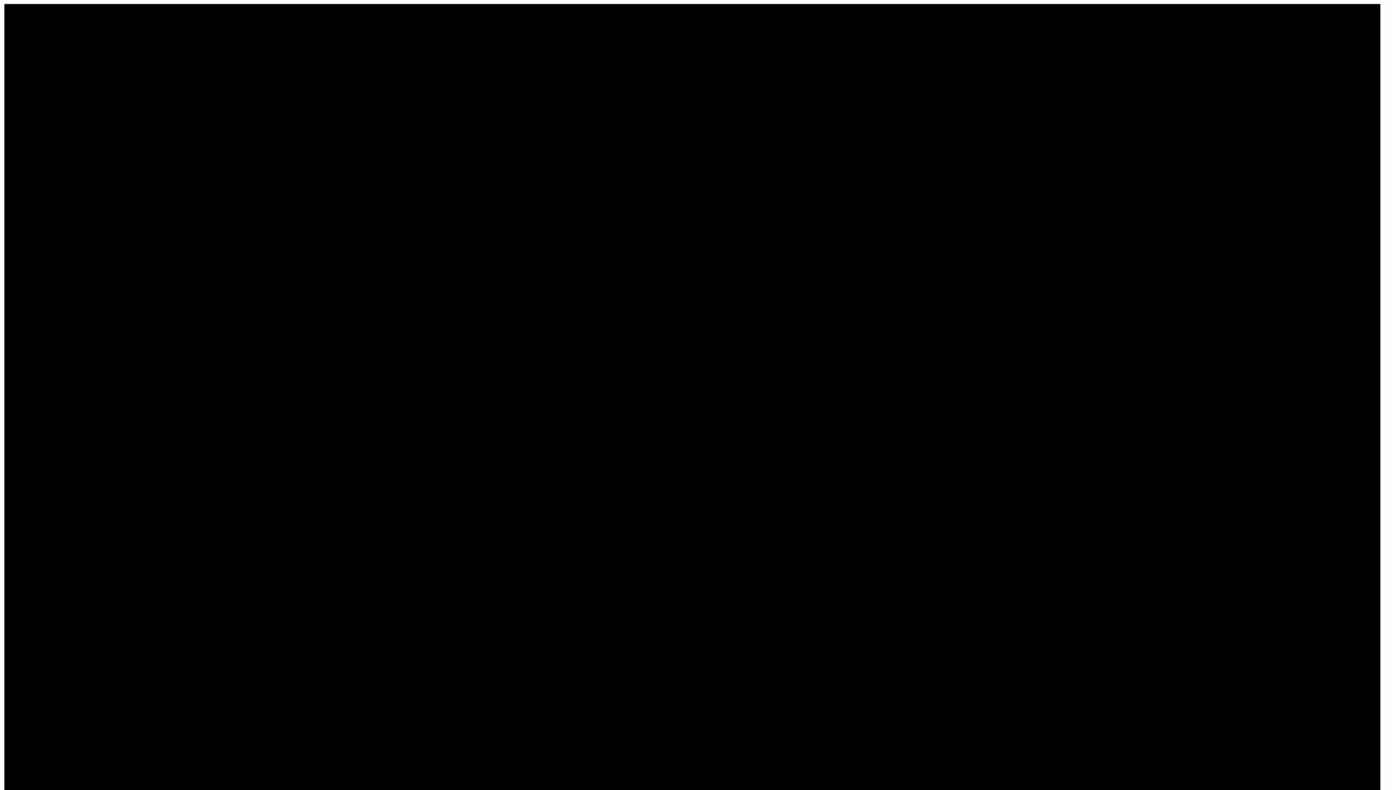


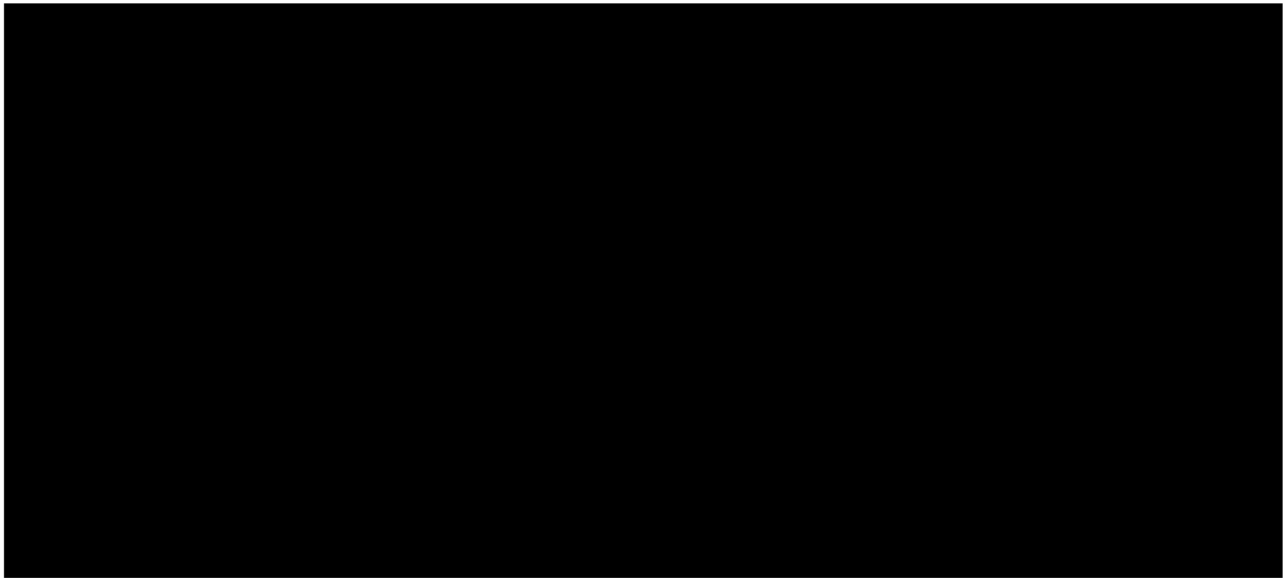
***The IP Addresses Allegedly Used By Mr. Mantha To Access The Snappy Auto Web Site Have  
No Association With Mr. Mantha***



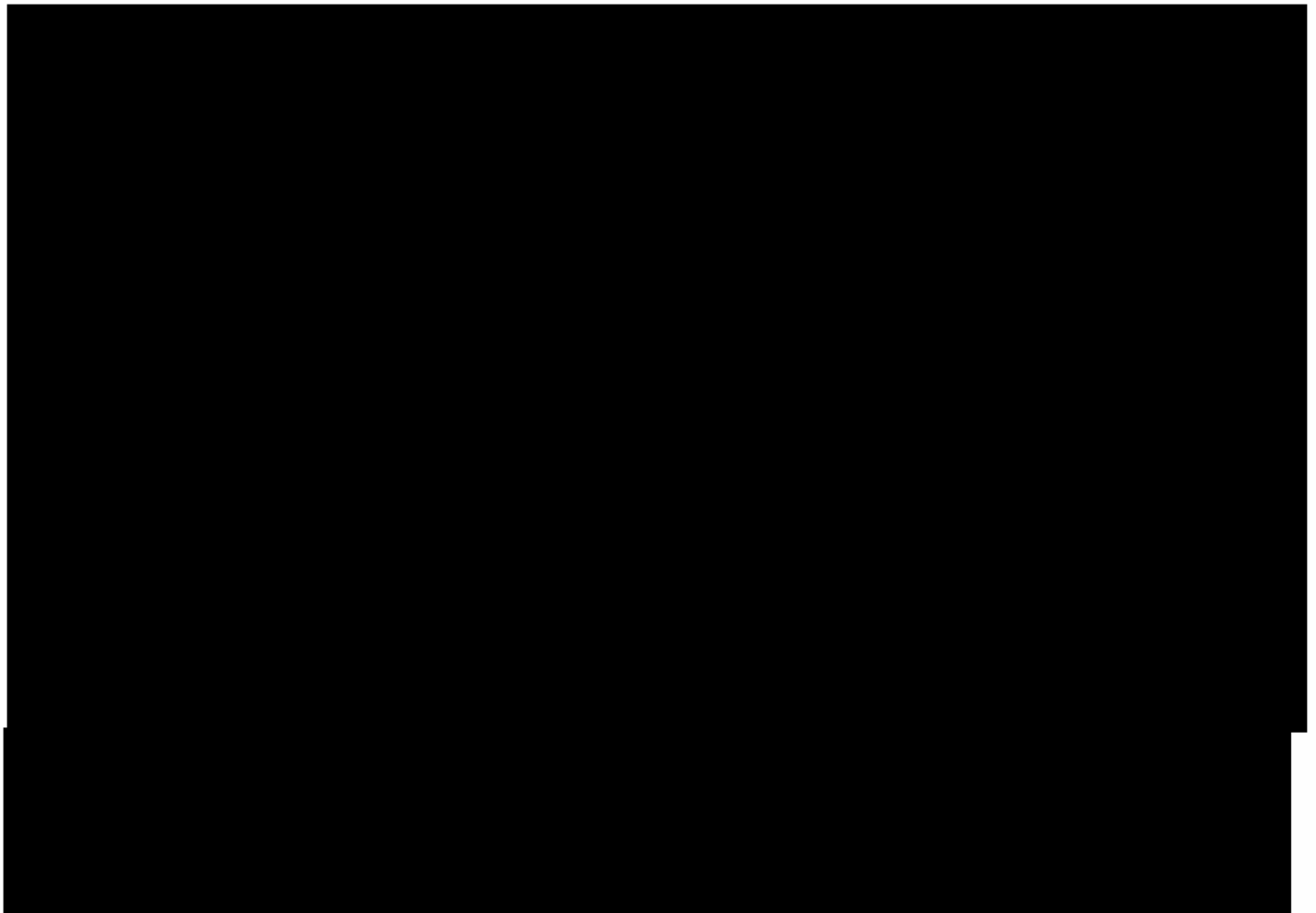


*The TCPA Disclosure Language On Snappy Auto Does Not Mention QuoteWizard*





*The 'Seller' Disclosed On The Snappy Auto Web Site  
Denies Any Connection to Snappy Auto, Plural, Fenix or to Mr. Mantha*



***Mr. Mantha's Personal Cell Phone Is Entitled to the Protection  
of the Do Not Call Registry***

85. The telemarketing texts sent to Mr. Mantha's Wireless Number on behalf of QuoteWizard were personally directed to Mr. Mantha and sought to sell him auto insurance. *See Exhibit 10*, Chronology of Text Exchanges Between QuoteWizard and Mr. Mantha, Produced by QuoteWizard at QuoteWizard\_Mantha 000009.

86. The texts were not directed to Mr. Mantha's employer. *Id.*

87. The Wireless Number was subscribed to Mr. Mantha personally by the telecommunications carrier Verizon. *See Exhibit 6*, Plaintiff's Supplemental Answers to Interrogatories at Answer #5, 7; *Exhibit 9*, Verizon Phone Bill Issued to Mr. Mantha.

88. The Wireless Number was subscribed to Mr. Mantha at his residential address. *Id.*

89. The Wireless Number was not subscribed to Mr. Mantha's employer or to any business. *Id. See Exhibit 25*, Deposition of Franklin Perkins School at page 29 lines 12-24 and page 30 line 1.

90. Mr. Mantha does not hold the Wireless Number out to the public as a business line, nor is it listed on his business card as a point of contact. *See Exhibit 6*, Plaintiff's Answers and Supplemental Answers to Interrogatories at #7; *Exhibit 26*, Mantha Business Card from The Franklin Perkins School.

91. Mr. Mantha does not have a home business. *See Exhibit 6*, Plaintiff's Answers and Supplemental Answers to Interrogatories at #7.

92. Mr. Mantha does not declare the Wireless Number as business expense on his tax return. *See Exhibit 6*, Plaintiff's Answers and Supplemental Answers to Interrogatories at #7.

93. The Wireless Number is part of a family plan that includes the personal cell phone of Mr. Mantha's wife. *Exhibit 9*, Verizon Phone Bill Issued to Mr. Mantha.

94. In his capacity as the Director of Residential Operations at the Doctor Franklin Perkins School, Mr. Mantha needs to be available even when not at the office and during non-traditional work hours when he is on call. Exhibit 8, Deposition of Joe Mantha Day 2 at page 24 lines 18-24, page 25 lines 1-24, and page 26 lines 1-6; Exhibit 6, Plaintiff's Supplemental Interrogatory Answer #7.

95. Due to the nature of his work, Mr. Mantha frequently makes and receives work calls on the Wireless Number. *Id.*

96. Mr. Mantha does have an office at his place of employment and a work phone number. *See* Exhibit 25, Deposition of The Franklin Perkins School at page 47 lines 16-24 and page 50 lines 1-4.

97. Mr. Mantha's employer partially reimburses Mr. Mantha \$30 a month for internet data costs associated with the Wireless Number to allow Mr. Mantha to access work related e-mail. *See* Exhibit 8, Deposition of Joe Mantha Day 2 at page 26 lines 8-13.

98. Mr. Mantha's employer confirmed the Wireless Number is Mr. Mantha's personal cell phone number over which The Doctor Franklin Perkins School exercises no control. *See* Exhibit 25, Deposition of Franklin Perkins School at page 29 lines 12-24 and page 30 line 1.

PLAINTIFF,

By his attorneys

/s/ Matthew P. McCue

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2021, I electronically transmitted the foregoing to all counsel of record via the electronic filing system.

By: /s/ Matthew P. McCue  
Matthew P. McCue